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7                   UNITED STATES DISTRICT COURT  
8                   EASTERN DISTRICT OF CALIFORNIA  
9

10 STEVE F. TIBBETTS and  
11 TAMBERLYN TIBBETTS,

12                   Plaintiffs,

13                   v.

14 KELLER MORTGAGE, LLC, dba  
15 KELLER MORTGAGE, NATIONSTAR  
16 MORTGAGE LLC, and NATIONSTAR  
17 MORTGAGE LLC, dba MR. COOPER,  
18 U.S. BANK NATIONAL  
ASSOCIATION and DOES 1-20,  
inclusive,

Defendants.

No. 2:23-cv-00596-JAM-CKD

**ORDER GRANTING DEFENDANT KELLER  
MORTGAGE, LLC'S MOTION TO  
DISMISS**

19 This case arises from a mortgage rescission transaction  
20 between Plaintiffs Steve F. Tibbetts and Tamberlyn Tibbetts  
21 (collectively, "Plaintiffs") and Defendant Keller Mortgage, LLC,  
22 dba Keller Mortgage ("Defendant Keller"). Plaintiffs' claim the  
23 actions of Defendant Keller, as well as those of Defendant U.S.  
24 Bank National Association ("Defendant U.S. Bank N.A."), Defendant  
25 Nationstar Mortgage, LLC. ("Defendant Nationstar"), and Defendant  
26 Nationstar Mortgage LLC, dba Mr. Cooper ("Defendant Cooper"),  
27 after Plaintiffs rescinded their loan agreement, resulted in  
28 damages to Plaintiffs' credit ratings and has caused Plaintiffs

1 to suffer emotional distress.

2 Before the Court is Defendant Keller's motion to dismiss  
3 Plaintiffs' claims against Defendant Keller for (1) Breach of  
4 Contract; (2) Breach of Fiduciary Duty; and (3) Constructive  
5 Fraud. See Mot. To Dismiss. ("Mot."), ECF No. 19. Additionally,  
6 Defendant Keller moves the Court to dismiss Plaintiffs' request  
7 for attorney's fees and punitive damages. Id. Plaintiffs  
8 opposed this Motion. Opp'n, ECF No. 22. Defendant Keller  
9 replied. Reply, ECF No. 23.

10

11 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

12 The facts are taken from the Second Amended Complaint  
13 ("SAC"), as well as the exhibits filed in support of the SAC, and  
14 assumed to be true for the purposes of this motion. See Federal  
15 Rules of Civil Procedure Rule 10(c) ("A copy of a written  
16 instrument that is an exhibit to a pleading is a part of the  
17 pleading for all purposes.").

18 In March of 2021, Plaintiffs took out a home equity line of  
19 credit through Defendant Keller ("Original Equity Loan"), secured  
20 against their real property. SAC ¶ 12, ECF No. 17.

21 In April of 2022, Plaintiffs began the process of  
22 refinancing the Original Equity Loan. Id. ¶ 13.

23 In May of 2022, Defendant Keller issued a new loan to  
24 Plaintiffs ("May 2022 Refinanced Equity Loan"). Id. ¶ 14.  
25 Plaintiffs were to use the May 2022 Refinanced Equity Loan to pay  
26 the balance on the Original Equity Loan and begin a construction  
27 project on their real property. Id.

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1        In June of 2022, Plaintiffs received a letter from Defendant  
2 Keller advising them that during closing of the May 2022  
3 Refinanced Equity Loan, Defendant Keller provided an incorrect  
4 Right to Cancel form to Plaintiffs. Id. ¶ 16. Defendant Keller  
5 provided Plaintiffs a new form, extending Plaintiffs' deadline to  
6 cancel the May 2022 Refinanced Equity Loan. Id.; See also Exh. 1  
7 to SAC, ECF No. 17.

8        Prior to the extended deadline, Plaintiffs signed the new  
9 form and sent the executed document to an employee of Defendant  
10 Keller, in accordance with the instructions on the form. SAC  
11 ¶ 17; Exh. 1 to SAC. Defendant Keller failed to respond to this  
12 executed form. SAC ¶ 18.

13       On July 7, 2022, Defendant Keller and Plaintiffs opened  
14 escrow to rescind the May 2022 Refinanced Equity Loan. Id.  
15 ¶¶ 18, 47. At some point before this date, the May 2022  
16 Refinanced Equity Loan was sold by Defendant Keller to Defendant  
17 U.S. Bank N.A. Id. ¶ 19. Defendant Cooper became the servicer.  
18 Id.

19       On July 25, 2022, Defendant Keller issued a new loan to  
20 Plaintiffs and Plaintiffs returned the construction funds,  
21 placing Plaintiffs in the position they were prior to the May  
22 2022 Refinanced Equity Loan. Id. ¶¶ 18, 36.

23       At some point between July 7, 2022, and July 25, 2022, the  
24 May 2022 Refinanced Equity Loan was repurchased by Defendant  
25 Keller from Defendant U.S. Bank N.A. Id. ¶ 20. As part of the  
26 repurchase, Defendant Keller was required to reconvey the May  
27 2022 note and deed of trust. Id. ¶ 37; Exh. 6 to SAC.

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1 Plaintiffs allege they did not receive a copy of the  
2 recorded Substitution of Trustee and Full Reconveyance, in  
3 violation of California Civil Code § 2941. See generally SAC  
4 ¶¶ 22, 41, 52, 54, 58. Additionally, Plaintiffs allege Defendant  
5 Keller failed to notify Defendants U.S. Bank N.A., Nationstar,  
6 and Cooper that a reconveyance had taken place. Id. ¶ 40.

7 Plaintiffs contend the failure of Defendant Keller to mail  
8 them a copy of the reconveyance documents caused Defendant Cooper  
9 to continue seeking enforcement of the May 2022 Refinanced Equity  
10 Loan after it was rescinded. See generally id. ¶¶ 23-31. As a  
11 result, Plaintiffs were reported by Defendant Cooper as  
12 delinquent on the May 2022 Refinanced Equity Loan, which resulted  
13 in “significant deterioration of their credit worthiness.” Id.  
14 ¶ 33.

15 Additionally, Plaintiffs claim Defendant Keller breached its  
16 fiduciary duty to act in the best interest as trustee of the deed  
17 of trust under California Civil Code § 2941.

18 Finally, Plaintiffs allege Defendant Keller committed  
19 constructive fraud under California Civil Code § 1573.

20

## 21 II. OPINION

### 22 A. Legal Standard

23 A Rule 12(b)(6) motion challenges the complaint as not  
24 alleging sufficient facts to state a claim for relief. Fed. R.  
25 Civ. P. 12(b)(6). “To survive a motion to dismiss [under  
26 12(b)(6)], a complaint must contain sufficient factual matter,  
27 accepted as true, to state a claim for relief that is plausible  
28 on its face.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)

1 (internal quotation marks and citation omitted). While  
2 “detailed factual allegations” are unnecessary, the complaint  
3 must allege more than “[t]hreadbare recitals of the elements of  
4 a cause of action, supported by mere conclusory statements.”  
5 Id. When a plaintiff fails to “state a claim upon which relief  
6 can be granted,” the Court must dismiss the suit. Fed. R. Civ.  
7 P. 12(b) (6).

8 In considering a motion to dismiss for failure to state a  
9 claim, a court generally accepts as true the allegations in the  
10 complaint and construes the pleading in the light most favorable  
11 to the plaintiff. Lazy Y Ranch Ltd. v. Behrens, 546 F.3d 580,  
12 588 (9th Cir. 2008). “In sum, for a complaint to survive a  
13 motion to dismiss, the non-conclusory ‘factual content,’ and  
14 reasonable inferences from that content, must be plausibly  
15 suggestive of a claim entitling the plaintiff to relief.” Moss  
16 v. U.S. Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009).

17 To defeat a motion to dismiss, a plaintiff must “plead  
18 enough facts to state a claim to relief that is plausible on its  
19 face.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570  
20 (2007). Plausibility under Twombly requires “factual content  
21 that allows the court to draw a reasonable inference that the  
22 defendant is liable for the misconduct alleged.” Ashcroft, 556  
23 U.S. at 678. “At this stage, the Court ‘must accept as true all  
24 of the allegations contained in a complaint.’” Id. But it need  
25 not “accept as true a legal conclusion couched as a factual  
26 allegation.” Id.

27 Conclusory allegations are not to be considered in the  
28 plausibility analysis. Id. at 679 (“While legal conclusions can

1 provide the framework of a complaint, they must be supported by  
2 factual allegations.")

3       B.     Judicial Notice

4           Defendant Keller requests the Court take judicial notice of  
5 three documents: (1) the recorded Deed of Trust executed by  
6 Plaintiffs for the May 2022 Loan; (2) the recorded Deed of Trust  
7 executed by Plaintiffs for the July 2022 Loan; and (3) the  
8 recorded Substitution of Trustee and Full Reconveyance for the  
9 May 2022 Loan. Mot. at 2; Req. for Judicial Notice, ECF No. 19-  
10 2. The Court does not need to take Judicial Notice of these  
11 documents since it can, and has, considered them under the  
12 incorporation-by-reference doctrine. See Khoja v. Orexigen  
13 Therapeutics, Inc., 899 F.3d 988, 1002 (9th Cir. 2018)  
14 (explaining that unlike rule-established judicial notice,  
15 incorporation-by-reference is a judicially created doctrine that  
16 treats certain documents as though they are part of the  
17 complaint itself when the plaintiff refers extensively to the  
18 document or it forms the basis of plaintiff's claim).

19       C.     Discussion

20           1.     Claim One: Breach of Contract

21           In general, real estate contracts are subject to the  
22 general law of contracts. The elements for a breach of contract  
23 claim include the following: (1) the contract, (2) plaintiff's  
24 performance or excuse for nonperformance, (3) defendant's  
25 breach, and (4) the resulting damages to plaintiff. Careau &  
26 Co. v. Sec. Pac. Bus. Credit, Inc., 222 Cal. App. 3d 1371, 1388  
27 (1990).

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1       Here, Plaintiffs argue Defendant Keller breached "both the  
2 May 2022 [Refinanced Equity] Loan and the July 2022 Loan." SAC  
3 ¶ 40. These breaches, Plaintiffs allege, occurred when  
4 Plaintiffs "had not received a copy of the Substitution of  
5 Trustee and Full Reconveyance" prepared and recorded by  
6 Defendant Keller's legal team. SAC ¶ 37. Plaintiffs claim they  
7 performed all obligations required of them, however, Defendant  
8 Keller failed to notify the purchaser of the May 2022 Refinanced  
9 Equity Loan that a reconveyance took place. Id. ¶ 40.  
10 Defendant Keller, Plaintiffs argue, breached its obligations as  
11 required under California Civil Code § 2941. Id. ¶ 41.

12       Defendant Keller, on the other hand, contends Plaintiffs'  
13 claim fails because Plaintiffs have failed to allege a contract  
14 that required Defendant Keller to notify the owners of the May  
15 2022 Refinanced Loan. Mot. at 5:24-26. The Court agrees.

16       Plaintiffs have not provided the Court with any evidence  
17 that there was an agreement between Plaintiffs and Defendant  
18 Keller which imposed upon Defendant Keller an obligation to  
19 notify the May 2022 Refinanced Equity Loan's purchaser of the  
20 reconveyance. Plaintiffs reference their deed of trust with  
21 Defendant Keller, stating that paragraph 23 of the deed of trust  
22 requires Defendant Keller to request that the trustee reconveys  
23 the property back to Plaintiffs after full repayment. SAC ¶ 37.

24       The full terms of paragraph 23 state:

25       23. **Reconveyance.** Upon payment of all sums secured by  
26 this Security Instrument, Lender shall request Trustee  
27 to reconvey the Property and shall surrender this  
28 Security Instrument and all notes evidencing debt  
secured by this Security Instrument to Trustee.  
Trustee shall reconvey the Property without warranty  
to the person or persons legally entitled to it.

1 Lender may charge such person or persons a reasonable  
2 fee for reconveying the Property, but only if the fee  
3 is paid to a third party (such as the Trustee) for  
4 services rendered and the charging of the fee is  
permitted under Applicable Law. If the fee charged  
does not exceed the fee set by Applicable Law, the fee  
is conclusively presumed to be reasonable.

5 Exh. 6 to SAC, ECF No. 17. Although there is a requirement that  
6 Defendant Keller request the trustee reconvey the property to  
7 Plaintiffs, there are no terms requiring Defendant Keller to  
8 notify the purchaser of the reconveyance, nor to provide  
9 Plaintiffs a copy of the Substitution of Trustee and Full  
10 Reconveyance. Plaintiffs' allegations in the SAC are  
11 insufficient to support their breach of contract claim.

12 The Court notes, within their breach of contract cause of  
13 action, Plaintiffs allege Defendant Keller "breached its  
14 obligations as a Trustee to the [Plaintiffs] as required by  
15 Civil Code section 2941." SAC ¶ 41. While California Civil  
16 Code § 2941 imposes statutory requirements on Defendant Keller  
17 after an obligation has been satisfied, See Cal. Civ. Code  
18 § 2941(b), an action under § 2941 is one in tort rather than  
19 contract because it seeks damages for violation of a statutory  
20 duty. Pintor v. Ong, 211 Cal. App. 3d 837, 841 (1989). The  
21 duty to reconvey exists in express provisions of the statute,  
22 regardless of any contractual obligations. Id. Therefore, if  
23 Plaintiffs are claiming that Defendant Keller violated a  
24 statutory requirements of § 2941, the action would be in tort  
25 not breach of contract. Accordingly, Plaintiffs' claim for  
26 breach of contract is dismissed without prejudice.

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1           2. Claim Two: Breach of Fiduciary Duty

2           Ordinarily, Plaintiffs' claim is no fiduciary duty in a  
3 lender-borrower relationship. Ragland v. U.S. Bank Nat'l Ass'n,  
4 209 Cal. App. 4th 182, 206 (2012) ("No fiduciary duty exists  
5 between a borrower and lender in an arm's length transaction.");  
6 Lawrence v. Bank of Am., 163 Cal. App. 3d 431, 437 (1985); Price  
7 v. Wells Fargo Bank, 213 Cal. App. 3d 465, 476 (1989). A lender  
8 owes no duty of care to a borrower when the lender's involvement  
9 of the loan does not exceed the customary role in arm's length  
10 lending and servicing. Sheen v. Wells Fargo Bank, N.A., 12 Cal.  
11 5th 905, 927 (2022), reh'g denied (June 1, 2022).

12           In a lender-borrower relationship, a special relationship  
13 can exist in certain circumstances, which may result in  
14 fiduciary obligations, however, the relationship must be beyond  
15 the scope of the traditional arm's length transaction. Barrett  
16 v. Bank of Am., 183 Cal. App. 3d 1362, 1369 (1986)  
17 ("Confidential and fiduciary relations are in law, synonymous  
18 and may be said to exist whenever trust and confidence is  
19 reposed by one person in another."); Brown v. Wells Fargo Bank,  
20 N.A., 168 Cal. App. 4th 938, 961 (2008) (determining that a  
21 bank's employee inducing elderly and frail individuals to rely  
22 on the bank to handle their financial affairs constitutes a  
23 fiduciary relationship.). A lender will owe a fiduciary duty to  
24 a borrower if it excessively controls or dominates the borrower.  
25 Pension Tr. Fund for Operating Engineers v. Fed. Ins. Co., 307  
26 F.3d 944, 955 (9th Cir. 2002).

27           In lending transactions involving deeds of trust, a trustee  
28 of a deed of trust is not a true trustee and does not hold

1 fiduciary obligations. Yvanova v. New Century Mortg. Corp., 62  
2 Cal. 4th 919, 927 (2016). A trustee of a deed of a trust merely  
3 acts as an agent for the borrower-trustor and the lender-  
4 beneficiary. Id.; Biancalana v. T.D. Serv. Co., 56 Cal. 4th  
5 807, 819 (2013).

6 Here, Plaintiffs argue Defendant Keller breached their  
7 fiduciary duty as trustee of the deed of trust. SAC at ¶ 48.  
8 Plaintiffs argue upon the recordation of the Substitution of  
9 Trustee and Full Reconveyance, Defendant Keller became the  
10 trustee of the deed of trust and owed a duty to "act with the  
11 utmost good faith in the best interests of Plaintiffs." Id.  
12 Plaintiffs argue Defendant Keller breached this duty when it  
13 failed to act as a reasonably careful loan provider and failed  
14 to fulfill its obligations under California Civil Code § 2941.  
15 Id. ¶¶ 51, 52.

16 Defendant Keller, however, argues it was not a fiduciary.  
17 Mem. in Supp. of Mot., ECF No. 19-1 at 9:15-17. Rather, its  
18 relationship with Plaintiffs was that of a lender-borrower under  
19 a contract. Id.

20 Plaintiffs claim a fiduciary relationship began when  
21 Defendant Keller stepped in as trustee, Opp'n at 14, and  
22 Defendant Keller breached this duty when it failed to provide a  
23 copy of the recorded reconveyance to Plaintiffs. Id. The  
24 failure to provide this document was the proximate cause of  
25 damages suffered by Plaintiffs. Id.

26 Here, the facts establishing the parties' relationship can  
27 be summarized as follows: (a) Defendant Keller was the initial  
28 loan provider of the Original Equity Loan; (b) Defendant Keller

1 and Plaintiffs reached an agreement on refinancing the Original  
2 Equity Loan; and (c) Plaintiffs properly rescinded that loan  
3 with Defendant Keller, placing them back in the position they  
4 were prior to the refinance.

5 The Court finds that no fiduciary relationship between  
6 Plaintiffs and Defendant Keller existed. Although Defendant  
7 Keller was the trustee identified in the deed of trust, the law  
8 is clear that a trustee of a deed of trust is not a fiduciary.  
9 There are no fiduciary obligations as a trustee of a deed of  
10 trust, or even just as a lender, absent facts suggesting  
11 otherwise. Yvanova v. New Century Mortg. Corp., 62 Cal.4th at  
12 927.

13 There are no facts alleged which establish Defendant Keller  
14 acted in any fiduciary capacity with Plaintiffs, such as  
15 Defendant Keller offering Plaintiffs financial advice or  
16 Plaintiffs providing Defendant Keller with confidential,  
17 privileged information, believing they were in a position of  
18 trust. Plaintiffs have not alleged any facts that create more  
19 than a typical arm's length lending and servicing transaction.  
20 Additionally, Plaintiffs have not alleged any facts that support  
21 Defendant Keller, acting as trustee, acted more than a passive  
22 agent for the parties.

23 Plaintiff's second claim for breach of fiduciary duty is  
24 dismissed without prejudice.

25       3. Claim Three: Constructive Fraud

26 Constructive fraud exists when there is a breach of duty,  
27 without actual fraudulent intent, in which the person at fault  
28 gains an advantage by misleading another with whom they owed a

1 duty. Cal. Civ. Code § 1573. Constructive fraud depends on the  
2 existence of a fiduciary relationship of some kind and arises  
3 from a breach of duty in that relationship. Mark Tanner Constr.  
4 v. Hub Internat. Ins. Servs., 224 Cal. App. 4th 574, 588 (2014);  
5 Ragland v. U.S. Bank Nat'l Ass'n, 209 Cal. App. 4th 182, 207  
6 (2012); Barrett v. Bank of Am., 183 Cal. App. 3d 1362, 1369  
7 (1986); Darrow v. Robert A. Klein & Co., 111 Cal. App. 310, 316  
8 (Cal. Dist. Ct. App. 1931). Like fraud claims, an action for  
9 constructive fraud requires a heightened pleading standard in  
10 which the action must be pled with specificity. Schauer v.  
11 Mandarin Gems of Cal., Inc., 125 Cal. App. 4th 949, 960 (2005).

12 Here, Plaintiffs argue Defendant Keller committed  
13 constructive fraud in violation of California Civil Code § 1573  
14 because Plaintiffs reasonably relied on Defendant Keller as the  
15 substituted trustee to comply with California Civil Code § 2941.  
16 SAC ¶ 58. Plaintiffs state Defendant Keller's failure to  
17 provide Plaintiffs a copy of the recorded Substitution and Full  
18 Reconveyance of the Deed of Trust caused damages to Plaintiffs.  
19 Id. Defendant Keller's failure to disclose to the other  
20 defendants that the May 2022 Refinanced Equity Loan was  
21 reconveyed and repurchased was a substantial factor in causing  
22 Plaintiffs' harm. Id. ¶¶ 59, 60.

23 Defendant Keller argues it did not owe Plaintiffs a  
24 fiduciary duty, thus, Plaintiffs' constructive fraud claim  
25 fails. Mem. in Supp. of Mot. at 11:13-19. The Court agrees.

26 First, as detailed above, Plaintiffs have failed to show  
27 that Defendant Keller owed Plaintiffs a fiduciary duty, or that  
28 it was in a position of trust or confidence. Absent facts

1 demonstrating a fiduciary relationship, Plaintiffs' constructive  
2 fraud claim fails.

3 Second, Plaintiffs have failed to allege that Defendant  
4 Keller, or any other party, gained any advantage by Defendant  
5 Keller's failure to disclose that the May 2022 Refinanced Equity  
6 Loan was reconveyed and repurchased.

7 Third, Plaintiffs repeatedly state that Defendant Keller's  
8 failure to provide the copy of the recorded Substitution and  
9 Full Reconveyance of Deed of Trust caused Plaintiffs' damages.  
10 Plaintiffs, however, have failed to allege facts demonstrating  
11 causation to establish "but-for" Defendant Keller failing to  
12 provide the documentation, Plaintiffs would not have been  
13 injured.

14 For all these reasons, Plaintiffs' claim for constructive  
15 fraud is dismissed without prejudice.

16 4. Request for Attorney's Fees

17 Defendant Keller requests the Court dismiss Plaintiffs'  
18 claim for attorney's fees. Mot. at 2. Under California law, the  
19 prevailing party is not entitled to attorney's fees unless  
20 provided for by contract or statute. Cal. Code Civ. Proc. §  
21 1021; See also Cal. Code Civ. Proc. § 1033.5(a)(10) (establishing  
22 attorney's fees are allowable as costs when authorized by (a)  
23 contract; (b) statute; or (c) law.).

24 Plaintiffs have not cited to a statute or any other law that  
25 entitles them to attorney's fees in this case. Under California  
26 Civil Code § 1717, Plaintiffs also cannot recover attorney's fees  
27 unless the action is under the contractual obligations set forth  
28 in the deed of trust. Cal. Civ. Code § 1717. Because

1 Plaintiffs' breach of contract claim fails, there is no action on  
2 the deed of trust and Plaintiffs are not entitled to attorney's  
3 fees.

4 Plaintiffs' claim for attorney's fees is dismissed without  
5 prejudice.

6           5. Punitive Damages Claim

7           Defendant Keller also requests an Order dismissing  
8 Plaintiffs' claim for punitive damages. Mot. at 2. Defendant  
9 Keller argues Plaintiffs fail to allege any facts in which  
10 fraudulent, malicious, or oppressive conduct could be inferred.  
11 Mem. in Supp. of Mot. at 14 (citing Kelley v. Corr. Corp. of Am.,  
12 750 F.Supp.2d 132, 1447 (E.D. Cal. 2010)).

13           If a cause of action bars recovery of certain damages, the  
14 request for damages can be dismissed in a Rule 12(b) (6) motion.  
15 Vaughan v. Anderson Reg'l Med. Ctr., 849 F.3d 588, 590 (5th Cir.  
16 2017); Beluca Ventures LLC v. Einride Aktiebolag, No. 21-CV-  
17 06992-WHO, 2022 WL 17252589, at \*5 (N.D. Cal. Nov. 28, 2022)  
18 (determining if punitive damages are unavailable as a matter of  
19 law, a motion to dismiss under Rule 12(b) (6) is procedurally  
20 proper.).

21           California Civil Code § 3294(a) allows punitive damages  
22 under certain circumstances by way of "punishing the defendant"  
23 in actions not arising from a contract. Here, Plaintiffs claims  
24 for breach of fiduciary duty and constructive fraud were the only  
25 non-contractual claims against Defendant Keller. Both claims  
26 have been dismissed.

27           Given the failure of Plaintiffs to properly plead a tortious  
28 claim against Defendant Keller, as a matter of law, Plaintiffs

1 request for punitive damages also fails and is dismissed without  
2 prejudice. Copelan v. Infinity Ins. Co., 359 F.Supp.3d 926, 930  
3 (C.D. Cal. 2019) (determining punitive damages request fails when  
4 underlying claims fail).

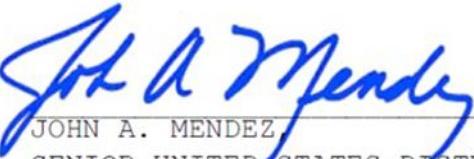
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6 III. ORDER

7 For the reasons set forth above, the Court GRANTS Defendant  
8 Keller's Motion to Dismiss claims one, two and three against it  
9 WITHOUT PREJUDICE. The Court also GRANTS Defendant Keller's  
10 Motion to Dismiss Plaintiffs' request for attorney's fees and  
11 punitive damages WITHOUT PREJUDICE. If Plaintiffs elect to amend  
12 their complaint, they shall file their Third Amended Complaint  
13 within twenty days (20) of this Order. Defendants' responsive  
14 pleadings are due twenty days (20) thereafter.

15 IT IS SO ORDERED.

16 Dated: October 12, 2023

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19 JOHN A. MENDEZ  
20 SENIOR UNITED STATES DISTRICT JUDGE  
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